

AMENDED IN SENATE APRIL 25, 2012

**SENATE BILL**

**No. 1260**

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**Introduced by Senator Wright**

February 23, 2012

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An act to ~~add~~ amend Sections ~~7575.5~~ 7575, 7646, and ~~7646.5~~ to 7648 of the Family Code, relating to paternity.

LEGISLATIVE COUNSEL'S DIGEST

SB 1260, as amended, Wright. Paternity.

**Existing**

(1) *Existing* law establishes a conclusive presumption that a man is the natural father of a child if he and the natural mother of the child are married and the child is born during the marriage, or if he signs a voluntary declaration of paternity, as provided. Under existing law, these presumptions of paternity may be rebutted by genetic evidence that another man is the biological father of the child. Existing law requires that a motion for genetic tests be filed not later than 2 years after the birth of the child, as specified.

Existing law provides that, except as to cases in which paternity is presumed under the conclusive presumption described above, specified persons, including a man alleged or alleging himself to be the father, may bring an action to determine the existence of the father and child relationship. Existing law requires that a motion to set aside a judgment to establish paternity must be brought within a ~~2-year~~ 2-year period, as specified. *Under existing law, if the results of genetic tests performed, as specified, indicate that the previously established father is not the biological father of the child, the court may, nevertheless, deny the motion to set aside or vacate a paternity judgment, based on the best interest of the child.*

~~This bill would, notwithstanding these provisions, grant courts the discretion to set aside a paternity judgment in the interest of justice, based on the totality of the circumstances and the best interests of the child, except as specified: provisions, permit the mother of the child, the man who signed the voluntary declaration of paternity, the child, or the legal representatives of any of these persons to bring a motion to set aside a voluntary declaration of paternity based on fraud, duress, or a material mistake of fact within 2 years of the date on which the party bringing the challenge knew or should have known that the man who signed the voluntary declaration was not the biological father. This bill would also prohibit a party, as specified, from bringing a motion to set aside or vacate a judgment establishing paternity if the party knew or should have known that the previously established father was not the biological father at the time of the initial action establishing his paternity.~~

*(2) Existing law provides certain factors that a court is required to consider in determining the best interest of the child in actions to set aside a voluntary declaration of paternity or vacate a judgment establishing paternity. These factors include, among others, the nature, duration and quality of any relationship between the man who signed the voluntary declaration of paternity or the previously established father and the child, and any request of the man who signed the voluntary declaration of paternity or the previously established father that the parent-child relationship continue.*

*This bill would require the court to give greater weight to the factors specified above. The bill would also delete certain factors to be considered by the court, including whether the conduct of the previously established father impaired the ability to ascertain the identity of, or get support from, the biological father. The bill would revise other factors the court is required to consider, including the benefit or detriment to the child in establishing parentage in a person other than the previously established father.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 7575 of the Family Code is amended to  
2     read:

7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the Department of Child Support Services within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The Department of Child Support Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the Department of Child Support Services. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was sent by any form of mail requiring a return receipt to the other person who signed the voluntary declaration of paternity. A copy of the return receipt shall be attached to the rescission form when filed with the Department of Child Support Services. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths. The department shall, upon written request, provide to a court or commissioner a copy of any rescission form filed with the department that is relevant to proceedings before the court or commissioner.

*(b) (1) Notwithstanding Section 7573 or any other law, a motion to set aside a voluntary declaration of paternity based on fraud, duress, or a material mistake of fact may be brought by the mother of the child, the man who signed the voluntary declaration of paternity, the child, or the legal representative of any of these persons within a two-year period to commence on the date the party bringing the challenge knew or should have known that the man who signed the voluntary declaration was not the biological father.*

~~(b) (1) Notwithstanding Section 7573, if~~

~~(2) If the court finds that the conclusions of all of the experts based upon the results of the genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not the biological father of the child, the court may set aside the voluntary declaration of paternity unless the court determines that denial of the action to set aside the voluntary declaration of paternity if the court finds that it is in~~

1 the best interest of the child, after consideration of all of the  
2 following factors and giving greatest weight to the factors  
3 described in subparagraph (A):

4 (A) *The nature, duration, and quality of the relationship between*  
5 *the man who signed the voluntary declaration and the child,*  
6 *including the duration and frequency of any time periods during*  
7 *which the child and the man who signed the voluntary declaration*  
8 *resided in the same household or enjoyed a parent-child*  
9 *relationship, and any request of the man who signed the voluntary*  
10 *declaration that the parent-child relationship continue.*

11 ~~(A)~~

12 (B) The age of the child.

13 ~~(B)~~

14 (C) The length of time since the execution of the voluntary  
15 declaration of paternity by the man who signed the voluntary  
16 declaration.

17 ~~(C) The nature, duration, and quality of any relationship between~~  
18 ~~the man who signed the voluntary declaration and the child,~~  
19 ~~including the duration and frequency of any time periods during~~  
20 ~~which the child and the man who signed the voluntary declaration~~  
21 ~~resided in the same household or enjoyed a parent-child~~  
22 ~~relationship.~~

23 ~~(D) The request of the man who signed the voluntary declaration~~  
24 ~~that the parent-child relationship continue.~~

25 ~~(E)~~

26 (D) Notice by ~~the biological father~~ *another person who would*  
27 *otherwise have a claim to parentage* of the child that he does not  
28 oppose preservation of the relationship between the man who  
29 signed the voluntary declaration and the child.

30 ~~(F)~~

31 (E) The benefit or detriment to the child in establishing ~~the~~  
32 ~~biological parentage of the child~~ *parentage in a person other than*  
33 *the man who signed the voluntary declaration.*

34 ~~(G) Whether the conduct of the man who signed the voluntary~~  
35 ~~declaration has impaired the ability to ascertain the identity of, or~~  
36 ~~get support from, the biological father.~~

37 ~~(H)~~

38 (F) Additional factors deemed by the court to be relevant to its  
39 determination of the best interest of the child.

40 ~~(2) If~~

1 (3) *Whether* the court *grants or* denies the action, the court shall  
2 state on the record the basis for the ~~denial of the action~~ *decision*  
3 and any supporting facts.

4 ~~(3) (A) The notice of motion for genetic tests under this section~~  
5 ~~may be filed not later than two years from the date of the child's~~  
6 ~~birth by a local child support agency, the mother, the man who~~  
7 ~~signed the voluntary declaration as the child's father, or in an action~~  
8 ~~to determine the existence or nonexistence of the father and child~~  
9 ~~relationship pursuant to Section 7630 or in any action to establish~~  
10 ~~an order for child custody, visitation, or child support based upon~~  
11 ~~the voluntary declaration of paternity.~~

12 ~~(B)~~  
13 (4) The local child support agency's authority under this  
14 subdivision is limited to those circumstances where there is a  
15 conflict between a voluntary acknowledgment of paternity and a  
16 judgment of paternity or a conflict between two or more voluntary  
17 acknowledgments of paternity.

18 ~~(4)~~  
19 (5) The notice of motion for genetic tests pursuant to this section  
20 shall be supported by a declaration under oath submitted by the  
21 moving party stating the factual basis for putting the issue of  
22 paternity before the court.

23 (c) (1) Nothing in this chapter shall be construed to prejudice  
24 or bar the rights of either parent to file an action or motion to set  
25 aside the voluntary declaration of paternity on any of the grounds  
26 described in, and within the time limits specified in, Section 473  
27 of the Code of Civil Procedure. If the action or motion to set aside  
28 a judgment is required to be filed within a specified time period  
29 under Section 473 of the Code of Civil Procedure, the period within  
30 which the action or motion to set aside the voluntary declaration  
31 of paternity must be filed shall commence on the date that the court  
32 makes an initial order for custody, visitation, or child support based  
33 upon a voluntary declaration of paternity.

34 (2) The ~~parent person~~ or local child support agency seeking to  
35 set aside the voluntary declaration of paternity shall have the  
36 burden of proof.

37 (3) Any order for custody, visitation, or child support shall  
38 remain in effect until the court determines that the voluntary  
39 declaration of paternity should be set aside, subject to the court's  
40 power to modify the orders as otherwise provided by law.

(4) Nothing in this section is intended to restrict a court from acting as a court of equity.

(5) If the voluntary declaration of paternity is set aside pursuant to paragraph (1), the court shall order that the mother, child, and alleged father submit to genetic tests pursuant to Chapter 2 (commencing with Section 7550). If the court finds that the ~~conclusions of all the experts, as disclosed by the evidence based upon the genetic tests, are that the person who executed the~~ voluntary declaration of paternity ~~is not the father of the child~~ *should be set aside pursuant to subdivision (b)*, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the declaration of paternity is ultimately determined to be the father of the child, any child support that accrued under an order based upon the voluntary declaration of paternity shall remain due and owing.

(6) The Judicial Council shall develop the forms and procedures necessary to effectuate this subdivision.

*SEC. 2. Section 7646 of the Family Code is amended to read:*

7646. (a) Notwithstanding any other ~~provision of law, a motion to set aside or vacate a judgment establishing paternity may be set aside or vacated upon a motion brought~~ by the previously established mother of a child, the previously established father of a child, the child, or the legal representative of any of these persons if genetic testing indicates that the previously established father of a child is not the biological father of the child. ~~The motion shall be brought within one of the following time periods:~~

*(1) This section shall not apply if the party bringing the challenge knew or should have known that the previously established father was not the biological father at the time of the initial action establishing his paternity.*

~~(1) Within~~

*(2) The motion shall be brought within a two-year period commencing with the date on which the previously established father knew or should have known of a judgment that established him as the father of the child or commencing with the date the previously established father knew or should have known of the existence of an action to adjudicate the issue of paternity,*

1 whichever is first, ~~except as provided in paragraph (2) or (3) of~~  
2 ~~this subdivision.~~

3 ~~(2) Within a two-year period commencing with the date of the~~  
4 ~~child's birth if paternity was established by a voluntary declaration~~  
5 ~~of paternity. Nothing in this paragraph shall bar any rights under~~  
6 ~~subdivision (c) of Section 7575.~~

7 ~~(3) In the case of any previously established father who is the~~  
8 ~~legal father as a result of a default judgment as of the effective~~  
9 ~~date of this section, within a two-year period from January 1, 2005,~~  
10 ~~to December 31, 2006, inclusive.~~

11 ~~(3) The court may grant the motion to set aside or vacate the~~  
12 ~~judgment establishing paternity pursuant to Section 7648.~~

13 (b) Subdivision (a) does not apply if the child *was conceived*  
14 *through assisted reproduction* or is presumed to be a child of a  
15 marriage pursuant to Section 7540.

16 (c) Reconsideration of a motion brought under paragraph (3)  
17 of subdivision (a) may be requested and granted if the following  
18 requirements are met:

19 (1) The motion was filed with the court between September 24,  
20 2006, and December 31, 2006, inclusive.

21 (2) The motion was denied solely on the basis that it was  
22 untimely.

23 (3) The request for reconsideration of the motion is filed on or  
24 before December 31, 2009.

25 *SEC. 3. Section 7648 of the Family Code is amended to read:*

26 7648. If the court finds that the conclusions of all of the experts,  
27 based upon the results of genetic tests performed pursuant to  
28 Chapter 2 (commencing with Section 7550) of Part 2, indicate that  
29 the previously established father is not the biological father of the  
30 child, the court may, ~~nevertheless, deny the motion if it determines~~  
31 ~~that denial of the motion is in the best interest of the child, set~~  
32 ~~aside the judgment of paternity if the court finds that it would be~~  
33 ~~in the best interest of the child~~ after consideration of the following  
34 factors, giving the greatest weight to the factors in subdivision (a):

35 (a) *The nature, duration, and quality of the relationship*  
36 *between the previously established father and the child, including*  
37 *the duration and frequency of any time periods during which the*  
38 *child and the previously established father resided in the same*  
39 *household or enjoyed a parent-child relationship, and any request*

1 *of the previously established father that the parent-child*  
2 *relationship continue.*

3 ~~(a)~~

4 ~~(b) The age of the child.~~

5 ~~(b)~~

6 ~~(c) The length of time since the entry of the judgment~~  
7 ~~establishing paternity.~~

8 ~~(e) The nature, duration, and quality of any relationship between~~  
9 ~~the previously established father and the child, including the~~  
10 ~~duration and frequency of any time periods during which the child~~  
11 ~~and the previously established father resided in the same household~~  
12 ~~or enjoyed a parent-child relationship.~~

13 ~~(d) The request of the previously established father that the~~  
14 ~~parent-child relationship continue.~~

15 ~~(e)~~

16 ~~(d) Notice by the biological father another person who would~~  
17 ~~otherwise have a claim to parentage of the child that he does not~~  
18 ~~oppose preservation of the relationship between the previously~~  
19 ~~established father and the child.~~

20 ~~(f)~~

21 ~~(e) The benefit or detriment to the child in establishing the~~  
22 ~~biological parentage of the child parentage in a person other than~~  
23 ~~the previously established father.~~

24 ~~(g) Whether the conduct of the previously established father~~  
25 ~~has impaired the ability to ascertain the identity of, or get support~~  
26 ~~from, the biological father.~~

27 ~~(h)~~

28 ~~(f) Additional factors deemed by the court to be relevant to its~~  
29 ~~determination of the best interest of the child.~~

30 ~~SECTION 1. Section 7575.5 is added to the Family Code, to~~  
31 ~~read:~~

32 ~~7575.5.—(a) Notwithstanding Section 7575, and except as~~  
33 ~~provided in subdivision (b), a court shall have the discretion to set~~  
34 ~~aside a paternity judgment in the interest of justice, based on the~~  
35 ~~totality of the circumstances and the best interests of the child.~~

36 ~~(b) This section shall not apply to a donor of semen who agrees~~  
37 ~~in a writing, pursuant to subdivision (b) of Section 7613, to be~~  
38 ~~treated in law as if he were the natural father of a child conceived~~  
39 ~~by artificial insemination or in vitro fertilization, and who is~~  
40 ~~determined by genetic testing to be the natural father.~~



1     ~~SEC. 2.—Section 7646.5 is added to the Family Code, to read:~~

2     ~~7646.5.—(a) Notwithstanding Section 7646, and except as~~  
3 ~~provided in subdivision (b), a court shall have the discretion to set~~  
4 ~~aside a paternity judgment in the interest of justice, based on the~~  
5 ~~totality of the circumstances and the best interests of the child.~~

6     ~~(b) This section shall not apply to a donor of semen who agrees~~  
7 ~~in a writing, pursuant to subdivision (b) of Section 7613, to be~~  
8 ~~treated in law as if he were the natural father of a child conceived~~  
9 ~~by artificial insemination or in vitro fertilization, and who is~~  
10 ~~determined by genetic testing to be the natural father.~~